

1 truthful and forthcoming with that information, that's true.

2 Q. I'll take not being truthful as akin to lying.

3 MR. BALTHAZARD: Thank you. I have no further
4 questions.

5 MR. ETTEMBERG: I have no questions.

6 THE COURT: Thank you, Doctor Daignault. You may
7 step down.

8 I take it that's all of the evidence that the
9 government wishes to submit in this regard?

10 MR. BALTHAZARD: Yes, your Honor.

11 THE COURT: And the defendant wishes to present no
12 rebuttal evidence?

13 MR. ETTEMBERG: That's correct, Judge.

14 THE COURT: So we are at this point ready to proceed
15 with the matters that we need to address in connection with
16 the sentencing.

17 Before I begin, I will say what I have received, and
18 you can tell me whether there are any documents that I have
19 not received if I don't mention them.

20 I have received and read the Presentence Report,
21 certain letters that were submitted on behalf of the
22 defendant, including two that were handed to my deputy this
23 afternoon, one from the West Boylston Public Schools and
24 another -- seems to be some sort of a thank-you note from a
25 Ms. Marengo (phon).

1 I have also received a motion for a downward
2 departure and sentencing memorandum from the defendant; as
3 I've said before, the government's motion for an evidentiary
4 hearing and the government's sentencing memorandum. And I
5 have a report from the Pretrial Services officer with respect
6 to the release status report.

7 I believe that is all the documentation that I have
8 received. Is there anything that I have not mentioned that I
9 should have received?

10 MR. ETTEMBERG: Not from me, Judge.

11 MR. BALTHAZARD: No, your Honor.

12 THE COURT: All right. Then turning to the matters
13 that we need to resolve, before we get to the sentencing,
14 there were certain objections filed in connection with the
15 Presentence Report. I understand, do I not, Mr. Ettenberg,
16 that Objection No. 5, with respect to the minimal participant
17 adjustment, has been waived by the defendant.

18 MR. ETTEMBERG: Yes.

19 THE COURT: And that, as far as I can tell, leaves
20 only one substantive objection that has not been resolved, and
21 that is, Objection No. 2, which pertains to Paragraph 19, the
22 loss calculation in the Presentence Report.

23 And I understand it is the defendant's position that
24 the defendant ought not to be held responsible for a \$110,000
25 loss or even a \$95,000 loss but for some reason that that loss

1 should be \$15,000. I'm not exactly sure why, but at least I
2 understand that there is an objection to the calculation of
3 the loss. Is that right, Mr. Ettenberg?

4 MR. ETTENBERG: Yes, Judge.

5 THE COURT: That is the only substantive objection we
6 have before us?

7 MR. ETTENBERG: It is. I'm not going to belabor it.
8 I clearly understand the case law. I understand the
9 government's position and I understand Probation's position.
10 And I simply put it in the context of -- this in some measures
11 dovetails to what we spoke about in chambers which is
12 essentially --

13 THE COURT: You mean in the lobby.

14 MR. ETTENBERG: In the lobby. -- that as soon as the
15 FBI came to Miss Evangelista, she made immediate arrangements
16 to have the money recovered, turned immediately over to the
17 bankruptcy trustee, and that the amount of the actual claims
18 that have been filed, at least from my information, is
19 approximately \$27,000.

20 And I also understand, in talking to Miss
21 Evangelista, that any creditor who has made a claim has been
22 reimbursed already. Restitution has been made. I'm
23 certainly --

24 THE COURT: You don't quarrel with the probation
25 officer's statement to me that, as a matter of law, pursuant

1 to Guideline 2B1.1, Application Note 2(a), the loss to be
2 calculated or to be attributed is the greater of actual or
3 intended loss?

4 MR. ETTENBERG: I don't disagree with that, Judge.

5 THE COURT: You don't dispute that the intended loss
6 here was \$94,500?

7 MR. ETTENBERG: I don't.

8 THE COURT: Any response to that?

9 MR. BALTHAZARD: I don't think I need to respond to
10 that, your Honor. I think that answers it.

11 THE COURT: I think that does answer that question.

12 The only other matter that was stated as an
13 objection, Mr. Ettenberg, was Objection No. 7, which, in fact,
14 talks about a downward departure motion for aberrant behavior.
15 That, in fact, is a downward departure motion and not an
16 objection?

17 MR. ETTENBERG: Yes.

18 THE COURT: So we've dealt with all of the
19 objections.

20 Then I will make findings that are required in
21 connection with the Presentence Report.

22 MR. ETTENBERG: Judge, I'm sorry to interrupt. There
23 was the Objection No. 4, which is the guideline manual
24 objection.

25 THE COURT: Yes. But I thought that had been agreed

1 to by counsel.

2 MR. ETTENBERG: It is. I just wanted that on the
3 record.

4 THE COURT: I should have mentioned that. The
5 Objection No. 4 was as to which of the various guidelines
6 should apply. And it is now agreed by counsel that the
7 guideline that was published and effective November 1, 2001,
8 rather than the guideline that was published last fall, 2003,
9 is the appropriate guideline.

10 MR. ETTENBERG: Yes, Judge.

11 MR. BALTHAZARD: Your Honor, I'm not sure if this is
12 the correct time to raise it. The government did not file an
13 objection with respect to acceptance of responsibility, but it
14 has been raised in the government's sentencing memorandum
15 because it was based on information that had been supplied
16 after the issuance of the original PSR and the period for
17 filing objections.

18 THE COURT: Yes.

19 MR. BALTHAZARD: I just want to make sure the
20 government's --

21 THE COURT: You may state your objection, then, if
22 you have one, to the recommendation that the probation officer
23 has given to this Court, and that is, that the defendant
24 should be awarded, if you will, a three-level reduction for
25 acceptance of responsibility.

1 MR. BALTHAZARD: Yes, your Honor. The government
2 makes that objection. Essentially, my argument is as is set
3 forth in the sentencing memorandum but that I believe that
4 based on the information supplied through Doctor Daignault,
5 and in Ms. Evangelista's statement of the version of the
6 events, she very much seeks to put the fault, the blame, for
7 most of her conduct on other people. And I would submit that
8 having done that, she has not fully accepted responsibility
9 for her actions.

10 THE COURT: Then why wouldn't the government be
11 moving that I should allow the defendant to withdraw her plea
12 of guilty? Because she came before this Court and pled
13 guilty, at which time a colloquy was had as to what the
14 government would or would not prove. And, as I recall, the
15 defendant, Mrs. Evangelista, fully admitted to the crime that
16 she was charged with.

17 I understand it's the position of the government that
18 she is now somehow retracting or partially retracting that
19 admission. But if you really want to pursue the ultimate aim
20 of your point, that is, that she doesn't now take
21 responsibility for her actions, isn't the appropriate remedy a
22 withdrawal of the plea and have her stand trial?

23 MR. BALTHAZARD: I think not, your Honor. I think
24 those are two entirely different issues. She pleaded to a
25 version of conduct as stated by the government and agreed that

1 she was guilty of the events at the time.

2 Now, in connection with her sentencing, she's made a
3 variety of what I can only characterize as self-serving
4 statements in which she has done everything possible to
5 minimize her role in that conduct, in that offense. She's not
6 sought to withdraw her plea, and I can understand why she
7 wouldn't want to do that, because it's quite clear that she
8 committed the offense.

9 But the issue of whether -- for purposes of getting
10 that acceptance of responsibility reduction, whether she is
11 really fully accepting responsibility -- truly accepting
12 responsibility for her actions -- I think those are separate
13 issues, and I think what she's done since having pled guilty
14 is gone back on that.

15 THE COURT: All right. I'll ask Mr. Ettenberg, is
16 your client retracting her admission, full admission, of guilt
17 in every material sense to bankruptcy fraud?

18 MR. ETTENBERG: She is not, Judge, not at all.

19 THE COURT: How do you respond to Mr. Balthazard's
20 statement that throughout at least your pleadings it at least
21 sounds like the defendant is pointing the finger at everybody
22 else except herself as the responsible party for this
23 bankruptcy fraud crime?

24 MR. ETTENBERG: I think my response is this: In the
25 context of hearing from Doctor Daignault and my discussions

1 with him and his report -- and I think that it goes to the way
2 -- let me start this. Miss Evangelista absolutely blames
3 nobody else but herself. She accepts full responsibility.
4 She has told me that over and over.

5 She has described a series of events where she felt
6 -- and I think that's fully described in all of the documents
7 you received -- how she felt and how she perceived things.
8 And coupling that with Doctor Daignault's testimony and his
9 report of her severe depression and the elements of the
10 Battered Women's Syndrome, how she felt and how she perceived
11 things, that she was a part and parcel of this.

12 However, she's the one that made the decisions to do
13 it. She's the one that did it. She's the one that ultimately
14 signed the paperwork. I'm using Mr. Balthazard's words
15 because I know he's going to use them later. She signed the
16 papers. She swore to the trustee. She did all of those
17 things. That was part of the conduct that she has accepted,
18 that she admits that she did in this case.

19 She's not backtracking at all. She's accepted
20 responsibility. The minute she was confronted by the FBI, she
21 couldn't get rid of that money fast enough. She turned that
22 over. She accepted it. I think, in my conversation with her,
23 she felt relieved that it was finally done, that this has been
24 eating at her. She knew it was wrong. She knew it was wrong
25 then. She knows it's wrong now. I think it's the words that

1 she uses in the pleadings are her rationalization to allow her
2 to get through all of this. So I don't think it's a
3 retraction in any way by her.

4 THE COURT: All right. Then I will turn to the
5 recommendations made to me in the Presentence Report starting
6 at Page 6, wherein it is recommended that the appropriate
7 guideline is the guideline manual issued November 1, 2001.
8 The Court adopts that recommendation.

9 The recommendation also points me to Guideline 2B1.1
10 as the most applicable guideline. The Court does adopt that
11 recommendation, that is, the so-called "theft, embezzlement
12 and receipt of stolen property" guideline, which does, in
13 fact, in its subsections, relate to bankruptcy fraud.

14 The base offense level of that particular guideline
15 is 6; and because under Subsection (b)(1)(E) of that
16 guideline, where the loss is between -- more than \$70,000 but
17 less than \$120,000, an eight-level increase is warranted. As
18 previously found by the Court in denying the defendant's
19 objection to the Probation Department's recommendation on
20 loss, the loss is calculated and determined to have been
21 \$94,500 because that was the intended loss, not the actual
22 loss but the intended loss. Therefore, an eight-level
23 increase is applied to the base offense level.

24 Furthermore, because the offense involved a
25 misrepresentation or other fraudulent action during the course

1 of a bankruptcy proceeding, Subsection (b)(7)(B) of the
2 subject guideline is applied, and a two-level increase to the
3 offense level is awarded for that fact.

4 The Probation Department did make a recommendation
5 which the Court is not going to follow, and that is with
6 respect to Guideline 2B1.1(b)(2)(A)(ii), which calls for a
7 two-level enhancement if the offense involved ten but less
8 than fifty victims.

9 The Court has determined that pursuant to Application
10 Note 3(A)(ii), wherein the definition of victims is said to
11 mean, "Any person who sustained any part of the actual loss
12 determined under Subsection (B)(i)," and it goes on but to
13 matters that are unimportant as far as this particular finding
14 is concerned.

15 The Court believes that because in this case, which
16 is unusual, the original intended victims, that is, the
17 creditors of Mrs. Evangelista, are or have already been made
18 whole with respect to their claims; and, therefore, they do
19 not come within the meaning of persons who sustained any part
20 of the actual loss.

21 Therefore, the Court has determined that a two-level
22 increase is not warranted under that particular section. And,
23 therefore, the Court finds that the adjusted offense level is
24 16. And, further, notwithstanding the objection of the
25 government, the Court awards a three-level downward adjustment

1 for acceptance of responsibility because, although it does
2 seem to the Court that the defendant has made certain
3 statements which call into question whether or not she fully
4 accepts responsibility for her crime, she, in fact, did accept
5 full responsibility at the time of the change of plea. The
6 Court took that change of plea and understands that there has
7 been no attempt or effort or desire to withdraw that plea.
8 Therefore, the Court does find that she is entitled to a
9 three-level reduction for acceptance of responsibility and,
10 therefore, ends up with a total offense level of 13.

11 There are no prior -- there is no prior record of
12 this defendant. Therefore, she has no criminal history points
13 and falls in Criminal History Category I.

14 Now, that leaves -- well, I'll ask, do counsel have
15 any comments or objections to make at this stage?

16 MR. BALTHAZARD: Your Honor, the only one is that the
17 government would object as to the victim enhancement, the
18 Court's decision to not include that two-level.

19 THE COURT: Mr. Ettenberg.

20 MR. ETTENBERG: I have no comments, Judge.

21 THE COURT: Then the only thing we have remaining
22 before we get to the sentencing is the motion of the defendant
23 for a downward departure. And there are two grounds for which
24 the defendant has moved for a downward departure. The first
25 is that she alleges that she was significant -- or had a

1 significantly reduced mental capacity and that under Guideline
2 5K2.13, she is entitled to a downward departure. We have, of
3 course, heard testimony from Mr. Daignault -- rather, Doctor
4 Daignault, in that regard. And, also, the defendant has moved
5 for a downward departure for aberrant behavior under Section
6 5K2.20.

7 I, of course, have considered very carefully the
8 arguments that have been made in the pleadings with regard to
9 both of those grounds for downward departure, but I will hear
10 counsel briefly if you wish to supplement those arguments.
11 First, Mr. Ettenberg.

12 MR. ETTENBERG: Thank you, Judge. I appreciate the
13 opportunity to do so. I don't suggest -- and I don't think
14 Doctor Daignault suggests -- that this rises to the level of a
15 full-blown diminished capacity. And I'm not hopeful that the
16 Court would come to that point, although I would certainly
17 urge it.

18 But I think that it cannot be ignored. And what the
19 significant mental impairment due to the severe depression
20 does, is it puts the case in a different context and puts it
21 into aberrant behavior. My argument is essentially a
22 continuum. It's a continuum of the severe depression that
23 distorts her view, that puts her in a hopeless situation, with
24 no hope at all for whatever is going to happen in her life,
25 feeling totally defeated. And then in an otherwise lawful

1 life, completely lawful life, she does one thing, and that's
2 commits a bankruptcy fraud.

3 Mr. Balthazard may argue that it's an ongoing event,
4 that it's -- she filed the bankruptcy petition concealing the
5 assets. She signed the forms. That's another part of it.
6 She was not truthful to the trustee. That's another part of
7 it; that all of this was, you know, separate acts. It was one
8 -- it was more than one continuing, long-term act.

9 I suggest that it really was one act, and she had to
10 just get through it to the end. And I think that it was
11 clearly aberrant behavior. The letters --

12 THE COURT: What was the one act, Mr. Ettenberg? Was
13 it the decision to file bankruptcy in the first place? Was it
14 the filing of her schedules in the second place? Was it the
15 appearance at the hearing in October in the third place? Or
16 was it accepting the discharge in December in the fourth
17 place?

18 MR. ETTEBERG: I think that it was all of that, but
19 I don't think she saw it as four separate events. I think she
20 saw it as, I've got to do this to get the bankruptcy done. I
21 think that's how she saw it, that this was just part of it.
22 It's just like going through the divorce. You've got to have
23 the pretrial conference. You've got to go through that.
24 You've got to have the four-way conferences. You've got to go
25 through those. You've got to go through depositions. You've

1 got to go through discovery. It's all part and parcel of one
2 event: the divorce. So this was all part and parcel of the
3 bankruptcy.

4 There's been comments made about what was said and
5 how it all came about. I think that if the Court looks at --
6 I don't want to tread into difficult territory. But I think
7 if you just simply look at the divorce settlement, Mrs.
8 Evangelista was faced with a situation of, here's \$110,000,
9 from which your lawyer is going to get X amount of dollars and
10 you're going to get the rest.

11 Now, you can take that money, and you can then put it
12 into the bankruptcy and walk away with literally nothing,
13 because the money would go into the bankruptcy, pay off the
14 creditors and it's over. You can do that. And then you get
15 nothing from your divorce. Or you can not put that money into
16 the bankruptcy, and that's your divorce settlement.

17 I think the way she was, her state of mind, her
18 defeat, after all that time and wherever she was, that was the
19 choice -- the Hobson's choice she felt and that's where she
20 went.

21 The history of this woman is clearly of a naive woman
22 who is not highly educated, whose life was essentially
23 controlled by her husband. Her daily life was controlled by
24 her husband. After the divorce her life was still controlled
25 by the husband. He controlled all the pursestrings all

1 throughout their marriage.

2 I think if -- and I've said this to a number of
3 people. If you sat down with Carol Evangelista for five
4 minutes, you'd see what a sweet, caring, compassionate,
5 understanding, nice person she is. And for her to find
6 herself in this situation today is beyond her imagination.
7 She cannot comprehend the idea and the concept of the words
8 that her husband said to her coming true: "I'm going to bury
9 you." And that's what he's done. And the final nail in this
10 coffin is the possibility that she's going to be incarcerated.

11 I urge the Court with every fiber that I have to not
12 incarcerate Miss Evangelista but to impose a period of home
13 detention. The humiliation, the embarrassment, this whole
14 nightmare has had a dramatic, devastating effect on her. And
15 it cannot be put into words. It can't be explained. We can't
16 walk in her shoes.

17 I represent to this Court that I have spent hours
18 upon hours with her. I've gotten to know her. I know Miss
19 Bowman has. I think Doctor Daignault has, the time that he
20 spent with her. I think it comes through in the reports and
21 the information that's been provided to you. This is a woman
22 who went along. Her hope was gone. She was beaten down. Her
23 will was lost. And her ability to stand up and speak for
24 herself was gone.

25 And I just would close by this: I've had some

1 conversations with Catherine Davis, who is the therapist who's
2 been talking to her and treating her. And what she's saying
3 to me is that one of the things that she's learned about Mrs.
4 Evangelista is that she was involved in something that she
5 couldn't get out of. She was so afraid to say no. She wasn't
6 able to speak up for herself. And none of this was all really
7 planned or premeditated by her.

8 What she also said to me is that what she's working
9 on in her therapy with her is her ability to be more
10 assertive, to assert herself in a way that makes her feel
11 comfortable and in a way that makes her be a whole person.

12 So I ask the Court to leave her with her family, to
13 give her the opportunity to continue in this therapy, and to
14 be on home detention for a period of time and not be
15 incarcerated. She has so clearly accepted her responsibility.
16 She has clearly understood what she's done is wrong and has to
17 be punished, but she punishes herself every day. And I think
18 that she clearly meets all of the requirements of an aberrant
19 behavior departure, all the elements that are put forth in the
20 statute. She has lived an otherwise completely lawful life
21 and now finds herself in this terrible, terrible nightmare.
22 Thank you, Judge.

23 THE COURT: All right. Mr. Balthazard.

24 MR. BALTHAZARD: Yes, your Honor. Your Honor,
25 respectfully, I don't believe that the requirements of an

1 aberrant behavior departure have been met. I won't argue
2 about the otherwise law-abiding-life factor. But with respect
3 to it being of limited duration, I would submit that an
4 offense that takes place over the course of several months,
5 involves several different actions, false statements being
6 made and documents being made under oath in a proceeding in
7 bankruptcy, I would suggest that that was not -- that that
8 would not be under any definition of limited duration.

9 The issue of her mental and emotional condition, my
10 understanding of the guidelines, only comes into play if, in
11 fact, she has met the requirements and fit to her criminal
12 activity under the definition of aberrant behavior to begin
13 with.

14 But with respect to both the mental and emotional
15 conditions that's been represented and the diminished capacity
16 argument, I feel like we're in Probate Court, that we're
17 relitigating a divorce, your Honor, which is something that
18 we're really not here to be doing. We don't know what
19 happened during that divorce proceeding. We will never know
20 the truth. We've heard Ms. Evangelista's version of what went
21 on in the marriage and the divorce. We've heard it over and
22 over again and understand now that Doctor Daignault relied
23 essentially on nothing more than Ms. Evangelista's version.

24 She says she got cheated in the bankruptcy. We don't
25 know. She had counsel. She had someone looking after her

1 interests. She had somebody looking for what she said were
2 hidden assets that her husband had. Again, we don't know.
3 Nothing was found. We'll never know whether anything was
4 there. We do know she felt cheated and she got out of the
5 marriage. She went through this divorce and she decided she
6 was going to keep it for herself. She had been cheated in the
7 divorce, and she was going to cheat her creditors on the other
8 end.

9 I think the Court should disregard completely
10 anything that was contained in Doctor Daignault's report. I
11 think the email from Fran Bowman shows that the conclusions
12 were bought and paid for, that he was told up front what they
13 wanted; to quote, "She needs a departure." She was -- Doctor
14 Daignault was told that this is a case of aberrant behavior
15 and asked him to -- gave him the standards for aberrant
16 behavior and asked him for his report. There's nothing in the
17 email that's been submitted to the Court asking for any
18 independent evaluation.

19 Doctor Daignault clearly was sought out because he's
20 somebody that Fran Bowman had previously dealt with before.
21 She knew what she was going to get from him, and she was going
22 to get a report that gave the -- gave a conclusion that this
23 was aberrant behavior. Lo and behold, that's exactly what he
24 provided.

25 I think it's very significant that Doctor Daignault

1 didn't even think it was worth bothering to hear the 341
2 meeting tape, the tape of Ms. Evangelista in the course of
3 committing this offense. What better evidence might he have
4 had as to her state of mind, the way she would have reacted,
5 the way she did react, what she actually said during that
6 proceeding? Was she crying? Was she soft? Was she loud? He
7 has no idea.

8 This is a situation, rare situation, where a
9 psychologist would actually be able to see -- at least hear --
10 what happened. And he felt -- didn't seem to be -- he didn't
11 seem -- he didn't even ask her, perhaps I could listen to the
12 tape. Didn't think it was significant enough. I would submit
13 to the Court that it would have been highly significant, but
14 it didn't really matter to him because he knew what conclusion
15 he was going to draw and so did Fran Bowman and Ms.
16 Evangelista when they hired him to do that. I would suggest
17 that the Court disregard his report and his conclusions
18 entirely.

19 For all these reasons the government opposes and all
20 the reasons set forth in the government's memorandum -- I
21 don't need to -- should not repeat all of them, your Honor.
22 The government opposes the downward departure on either
23 ground. The government would recommend that the Court impose
24 a sentence at the low end of the sentencing guideline ranges.
25 There's no obligation on the government to make that

1 recommendation. There's no plea agreement in this case. But
2 the facts of this case are not extraordinary. The Court --
3 this Court has obviously handled many bankruptcy fraud cases.
4 I'm familiar with many of them. I don't think there's
5 anything extraordinary or some reason why a sentence should be
6 imposed above the low-end range in this case.

7 There's no restitution to be paid because the money
8 has all come back. The government would recommend a \$100
9 mandatory special assessment, two years of supervised release.
10 The government would recommend a fine in this case. I think
11 it's clear that Miss Evangelista has the funds to pay a fine.
12 I don't think that the Court should impose anything
13 particularly significant, particularly if the Court is going
14 to send her to prison. That is a very significant punishment
15 in this case. I would recommend the low end, but I think
16 that, despite the information in the Presentence Report, the
17 fact that there's sufficient funds to pay for Ms. Bowman and
18 for this report, indicate that there is at least enough to pay
19 the minimum fine that's required under the guidelines. That's
20 the government's recommendation, your Honor.

21 THE COURT: All right. Thank you, Mr. Balthazard.

22 The Court has, as I said before, carefully considered
23 this matter in great detail. I do not believe there is
24 sufficient grounds for a downward departure either under the
25 claimed significant reduced mental capacity or under the

1 aberrant behavior provisions of the guidelines.

2 I do not believe that Mrs. Evangelista did not know
3 right from wrong. I am confident that she did, in fact, know
4 right from wrong. I do not believe that she was unable to
5 control her actions. I believe to the contrary; she was able
6 to control her actions by virtue of all of the evidence that I
7 have before me.

8 I do not either fully attribute or discount Doctor
9 Daignault's opinions because Doctor Daignault, who is, I am
10 sure, a very competent doctor -- psychologist and/or doctor --
11 did himself not say unequivocally that he believed that his
12 client did not know right from wrong or was unable to control
13 her actions.

14 And I agree with him, that we are on different
15 planes. Psychology and the law do not neatly overlap. But I
16 am in a position of having to decide whether or not she
17 qualifies under strict written statutory law with certain
18 requirements for downward departure, and I believe that she
19 does not qualify as being -- having a significantly reduced
20 mental capacity; and, therefore, her motion for downward
21 departure under 5K2.13 is denied.

22 Further, with respect to the claim for aberrant
23 behavior, I have a statute that I must comply with, and it
24 says that aberrant behavior means a single criminal occurrence
25 or single criminal transaction that: (a) was committed

1 without significant planning; (b), was of limited duration;
2 and (c), represented a marked deviation by the defendant from
3 an otherwise law-abiding life.

4 I am sure that she qualifies for the third subsection
5 of that reasoning for a downward departure; that is, this does
6 represent a marked deviation from her otherwise law-abiding
7 life. But it was not of limited duration and it was not
8 without significant planning. The matter persisted between
9 August and December, and there were multiple opportunities for
10 Mrs. Evangelista to decide that she would abide by the law,
11 not the least of which was signing documents specifically
12 above an absolutely clear statement that she was required to
13 sign those documents truthfully or risk going to prison if she
14 did not.

15 This was not an aberrant behavior. This was
16 something that took planning, and it was not of a limited
17 duration. The motion for downward departure for aberrant
18 behavior is denied.

19 We are then at the point for recommendations for
20 sentencing. I've already heard the government's
21 recommendation. Mr. Ettenberg, does the defendant have a
22 recommendation?

23 MR. ETTEBERG: Yes, Judge. If the Court is not
24 going to be departing downward, then I would ask the Court to
25 sentence at the lowest level of the guidelines. I would also

1 tell you, Judge, that Miss Evangelista, if the Court would
2 permit, does have a statement she would like to make.

3 THE COURT: She will get that opportunity. Do you
4 wish any further opportunity to expand on your recommendation,
5 Mr. Balthazard?

6 MR. BALTHAZARD: No, your Honor.

7 THE COURT: Does the defendant wish to address the
8 Court before sentence is imposed?

9 MR. ETTENBERG: Before I read her statement, Judge, I
10 do want to make one comment about my sentencing
11 recommendation. I would ask you not to impose a fine. Her
12 finances are limited severely. The amount of monies that she
13 has expended to date, I can represent to the Court, for myself
14 and Miss Bowman have not been great. And whatever else has
15 been left over has gone to help pay for Doctor Daignault. So
16 there has not been hundreds of thousands or even thousands and
17 thousands of dollars spent here. So I would ask the Court not
18 to impose a fine. She is a single mother. She's got
19 financial obligations, as represented in the financial
20 statement. So I would ask you not to impose a fine.

21 Having said that, this is a statement that she has
22 written. "Judge Gorton, I, Carol Evangelista, accept full
23 responsibility for what I've done. I am not denying that what
24 I've done was wrong and criminal. I know when I didn't list
25 the money, signed the paperwork and swore to the trustee that

1 there were no assets, I was wrong in doing so.

2 "I am so sorry. I feel remorse every waking hour of
3 the day. I try to live my life like I used to, but it's
4 impossible for me to do that. I no longer go into any of the
5 businesses in my town. I do my grocery, CVS and gas shopping
6 out of town. I no longer go into any of the restaurants in
7 town. I don't want to run into anyone that I know. I'm
8 embarrassed and consumed with guilt. When I enter my
9 neighborhood, I go the long way around so I no longer chance
10 seeing the neighbors that I used to be friendly with. I'm
11 uncomfortable everywhere I am, always hoping that no one will
12 know that I'm the woman that committed the crime. I'm
13 embarrassed every time I have to walk into school to pick up
14 my daughter.

15 "My life, as I know it, has changed forever. I'm
16 having a very difficult time living this way. I've always
17 tried to set good examples for my children. I've helped them
18 through the trauma of a divorce, and they have turned out to
19 be wonderfully adjusted children. It is truly killing me as
20 to what the outcome of this is going to do to them. Please do
21 not take me away from them. To be unable to be at their
22 school plays, their birthdays, soccer and baseball games will
23 scar them for life and will affect me deeply. I love them
24 dearly. Please allow me to be their mother and participate in
25 their lives like they have always known. I am so sorry for

1 what I have done and will live with this forever. Thank you.
2 Carol Evangelista."

3 THE COURT: Do counsel know of any reason why
4 sentence ought not to be imposed at this time?

5 MR. BALTHAZARD: No, Judge.

6 MR. ETTEBERG: No, Judge.

7 THE COURT: Mrs. Evangelista, please stand. It gives
8 this Court no pleasure at all to have to sentence someone in
9 your position, Mrs. Evangelista. This is a very difficult
10 job. But when you violate the law and you do so knowingly and
11 understandingly, you are going to pay the price. And the
12 price in this case is going to mean imprisonment.

13 It would be a much longer imprisonment but for the
14 extenuating circumstances that have been brought very
15 effectively to my attention by your lawyer, by the Probation
16 Department, by the government's lawyer. If it were not for
17 the very troubling marriage, divorce and problems that you
18 have had, you would be going to jail for a much longer period
19 of time than you are, in fact, going to do.

20 But you violated a very serious law: the bankruptcy
21 laws of this country. You at least intended to defraud your
22 creditors out of almost \$100,000. That's just like stealing
23 \$100,000. Whether you think it is or it isn't, that's what it
24 is. Therefore, you will satisfy the requirements of the law.

25 I sincerely hope that this is the last time you'll

1 ever have any involvement with the law in this sense and that
2 you will be able to take from this experience something
3 positive and make a better life for yourself after you've
4 served this sentence.

5 Pursuant to the Sentencing Reform Act of 1984, it is
6 the judgment that you, Carol Evangelista, are hereby committed
7 to the custody of the Bureau of Prisons, to be imprisoned for
8 a term of twelve months and one day.

9 Upon release from imprisonment, you shall be placed
10 on supervised release for a term of two years. Within 72
11 hours of release from custody of the Bureau of Prisons, you
12 shall report in person to the district to which you are
13 released.

14 It is further ordered that you shall pay a fine of
15 \$2,000. The fine shall be paid immediately or in accordance
16 with a court-ordered repayment schedule. The fine is to
17 continue -- is to be continued to be paid until the full
18 amount, including any interest required by law, has been paid.
19 You shall notify the United States Attorney for this district
20 within 30 days of any change of mailing or residence address
21 that occurs while any portion of that fine remains unpaid.

22 While on supervised release, you shall not commit
23 another federal, state or local crime. You shall refrain from
24 any unlawful use of a controlled substance. Drug testing
25 conditions are suspended based upon the Court's determination

1 that you pose a low risk of any substance abuse.

2 In addition, you shall comply with the standard
3 conditions that are described in the sentencing guidelines at
4 Section 5D1.3(c) and with the following special conditions:
5 First, you are prohibited from possessing a firearm or other
6 dangerous weapon.

7 Second, you are to pay the balance of the fine in
8 accordance with a court-ordered repayment schedule.

9 Third, you are prohibited from incurring new credit
10 charges or opening additional lines of credit without the
11 approval of the probation officer.

12 Fourth, you are to provide the probation officer
13 access to any requested financial information.

14 And fifth, you are -- the financial information
15 provided to the Probation Office by you may be shared with the
16 Financial Litigation Unit of the United States Attorney's
17 Office.

18 Finally, you are to participate in a mental health
19 treatment program as directed by the United States Probation
20 Office. You shall be required to contribute to the costs of
21 services for such treatment based upon your ability to pay or
22 the availability of third-party payment.

23 It is further ordered that you shall pay to the
24 United States a special assessment of \$100, which shall be due
25 and payable immediately.

1 It is further ordered that you shall self-surrender
2 at the institution designated by the Bureau of Prisons four
3 weeks from today, that is, March 23, 2004.

4 Mrs. Evangelista, you have a right to appeal this
5 sentence. If you choose to appeal, you must do so within ten
6 days. If you cannot afford an attorney, an attorney will be
7 appointed on your behalf. Do you understand that?

8 MS. EVANGELISTA: Yes.

9 THE COURT: Is there any further business, then, to
10 come before the Court in these proceedings, Mr. Balthazard?

11 MR. BALTHAZARD: No, your Honor.

12 THE COURT: Mr. Ettenberg.

13 MR. ETTENBERG: The only thing I would request,
14 Judge, is that there be a judicial recommendation that any
15 facility that she be designated to be closest to her family
16 within the confines of New England, if possible.

17 THE COURT: Yes. The Court will recommend that she
18 be confined in the facility of the appropriate security level
19 nearest to her home. That is likely to be either Framingham
20 or Danbury, Connecticut.

21 Anything further?

22 MR. ETTENBERG: No, your Honor.

23 THE COURT: We're adjourned.

24 (Whereupon, at 4:40 p.m. the hearing concluded.)
25

C E R T I F I C A T E

I, Cheryl Dahlstrom, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 52, constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 03-40034, United States of America vs. Carol Evangelista.

Cheryl Dahlstrom